Robert W. Quinn, Jr.
Federal Government Affairs
Vice President

Suite 1000
1120 20th Street NW
Washington DC 20036
202 457 3851
FAX 202 457 2545

December 14, 2004

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte Communications, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket Nos. 04-313 and 01-338

Dear Ms. Dortch:

On behalf of AT&T, I am writing in response to a specific request from Scott Bergmann, Legal Adviser to Commissioner Jonathan Adelstein, for additional information regarding the extent to which a loop impairment test that relied on the presence of two facilities-based providers in a building would impact the availability of high-capacity loop UNEs to the CLEC industry. Pursuant to 47 C.F.R. Sec. 1.1204(a)(10), this submission is exempt from the sunshine period prohibition against *ex parte* presentations.

As the record developed in this proceeding demonstrates, businesses purchasing high capacity services tend to be concentrated in dense urban areas. According to Verizon itself, more than 80 percent of the demand for high capacity special access services in its operating territories is concentrated in only 8% (or 532) of its wire centers, and more than three-quarters of those wire centers are in the 20 MSAs in Verizon's serving area with the largest amount of high capacity demand. *See* 11/12/04 Verizon Ex Parte Letter and Attachments and Verizon 07/02/04 *Ex Parte* Letter and attached White Paper at 6. Since demand for such facilities is so highly concentrated, and since the costs of self-supply are so high, any UNE restrictions imposed on loops that serve buildings in those dense urban areas will have an enormous impact on the CLEC industry unless they have ready access to multiple wholesale alternatives at a building.

This demand in concentration is no surprise to the Bells, and they are well aware of the impact of rules that would broadly cut off cost-based access to UNE loops. First, the economics of self-deployment require the presence of significant demand before a carrier can be expected to construct its own facilities. Thus, CLECs can only afford to deploy facilities to building that offer the potential for the most significant revenues. Verizon's own evidence is that, while CLECs have only constructed loops to only a small fraction of the nation's buildings at large, CLECs have targeted the highest-revenue buildings. Verizon has asserted that CLECs have self-deployed fiber to 65% of buildings with more than $6 million spending annual telecom revenues, 57% of buildings with $4-6 million spending such revenues; and 50% of buildings with $2-$4 million spend. 7/2/04 Verizon *Ex Parte* at 15. Thus, while less than 5% of the nation's commercial buildings are currently served by CLEC fiber, that small fraction represents approximately 50% of the buildings with at least $2 million of potential revenue and almost 2/3rds of the buildings with $6 million or more.[1] Thus, eliminating UNE availability at the very low capacity limits recommended by competitive carriers (DS1s and up to 2 DS3s),[2] based on the presence of two competitive firms that have built fiber facilities to serve at the OCn level (a demand level that the Commission has already found indicates non-impairment) would cut all other competitive carriers off from enormous opportunities, unless they have access to multiple competitive wholesalers at those specific locations.[3] Indeed, the elimination of UNE availability at those buildings could cripple facilities-based CLEC providers and render their investments in their own networks substantially less valuable.

It is also well documented in the record that, in order to offer enterprise services, a CLEC must be able to offer services to business customers throughout a metro area. This is so for two basic reasons. First, to justify the enormous fixed costs of a fiber backbone, switching and related investment, the CLEC must have UNE access to a sufficient number of buildings in the metro area to drive enough traffic to the backbone to enable it to recover its initial investment. Second, to market services effectively, the CLEC cannot have a "swiss cheese" network, but must be able to serve businesses generally in the areas it is targeting.

If a CLEC is unable to serve a significant number of buildings in an area through a combination of self-deployed fiber facilities (where economical) and UNE facilities at the lower capacity levels (2 DS3s or less), it may be precluded from serving the area generally. Because demand is so highly concentrated, if even a small fraction of the

---

[1] Note that Verizon's data do not identify whether a carrier that has constructed loop facilities to a building could access all of the customers in that building. AT&T's experience is that such situations are the exception rather than the rule, even in buildings where it has constructed its own loops.

[2] The record evidence clearly demonstrates that carriers requiring only this relatively small level of capacity could never reasonably be expected to recoup their investments.

[3] A unanimous Commission determined in the *Triennial Review Order* that at least two wholesale providers are necessary to overcome the impacts of the ILEC's pricing umbrella.

highest revenue buildings in a metro area are taken "off the table," the CLEC may not be able to generate sufficient business to justify its initial investment in its fiber backbone and switch. Likewise, a CLEC may not be able to effectively market its services if there are a substantial number of buildings that it is cannot serve.

It can also be expected that the BOCs will aggressively seek to deny CLECs access to customers in many buildings by broadly interpreting an alternative provider test in a manner that will eliminate as many UNEs as possible. Even a brief review of the Verizon "fiber maps" as filed repeatedly in this record show the broad scope of alleged CLEC fiber and alternative facilities that the Bells would argue should trigger a non-impairment finding.

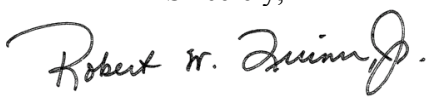
Indeed, Bell claims regarding alternative facilities can be expected to lead to endless disputes. For example, Verizon has claimed that there are at least 32,000 buildings with CLEC fiber (see 11/12/2004 Verizon Ex parte), and up to 50,000 such buildings (7/2/2004 Verizon Ex Parte). This demonstrates only that the Bells' methodologies for determining CLEC building counts (based on data from GeoResults and Telcordia) are highly controversial, which will not doubt increase uncertainty and breed dispute.

And any such dispute would not end with the question of where competitive fiber is deployed. The Bells have asserted that cable and wireless alternatives should likewise trigger findings of non-impairment, and the Bell assertions regarding the presence of these alternative providers are again made with a broad stroke. Verizon asserts that 40% of enterprise, 29% of middle market, and 23% of small business customers use fixed wireless for some high-capacity services. Bell UNE Fact Report at III-36. Verizon also asserts that 41% of enterprise, 32% of middle market, and 44% of small businesses were using cable modem services for some high-capacity services (UNE Fact Report at III-37) that Cablevision alone serves 1500 buildings and that Cox will soon reach more than 25% of the businesses in its territory. UNE Fact Report at III-8. These facts will of course be hotly disputed by the competitive industry and the Commission will be required to referee building-by-building trench battles over the degree of competitive presence.

All these factors weigh heavily against reliance on an alternative facilities test and in favor of a test designed to eliminate UNEs only where real multiple wholesale alternatives can be found to exist in a building at the appropriate capacity levels.

In accordance with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,



cc: S. Bergmann; C. Libertelli; M. Bill; D. Gonzalez; J. Rosenworcel;
M. Carey; J. Carlisle; J. Miller; R. Hanser; I Dillner